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Attorney for Plaintiffs

9 The Honorable James L. Robart

10 UNITED STATES DISTRICT COURT OF THE WESTERN  
11 DISTRICT OF WASHINGTON AT SEATTLE

12 CAROLINE ANGULO, a single person, ERIC  
KELLER, a single person, ISABEL LINDSEY  
13 and CHARLES LINDSEY, a married couple,  
and CHRISTINE BASH, individually and as  
14 personal representative of the ESTATE OF  
STEVEN BASH,

15 Plaintiffs.

16 v.

17 PROVIDENCE HEALTH & SERVICES  
WASHINGTON, a non-profit Washington  
18 Corporation, also d/b/a PROVIDENCE ST.  
MARY MEDICAL CENTER; Dr. JASON A.  
19 DREYER, DO, and JANE DOE DREYER,  
husband and wife and the marital community  
20 thereof; Dr. DANIEL ELSKENS DO, and  
JANE DOE ELSKENS, husband and wife and  
21 the marital community thereof; and  
JOHN/JANE DOES 1-10, and any marital  
22 communities thereof,

23 Defendants.

NO. 22-CV-00915-JLR

**TRIAL BY JURY REQUESTED**

**CLASS ACTION COMPLAINT  
(SECOND AMENDED)**

1 Plaintiffs allege:

2 **I. INTRODUCTION**

3 1.1 For over 100 years, Defendant PROVIDENCE HEALTH & SERVICES  
4 WASHINGTON (hereinafter “PROVIDENCE”) has been a member of the medical community in  
5 the state of Washington, including Eastern Washington. Upon information and belief,  
6 PROVIDENCE has owned and operated St Mary Medical Center (SMMC), a hospital located in  
7 Walla Walla, Washington since 1880. Providence St. Joseph Health (“Providence St. Joseph  
8 Health”) is a Washington non-profit corporation that shares its headquarters with PROVIDENCE.

9 1.2 PROVIDENCE promotes itself as providing excellent, reliable, and necessary  
10 medical care.

11 1.3 PROVIDENCE employed Dr. DANIEL ELSKENS DO, and Dr. JASON A.  
12 DREYER, DO, as neurosurgeons in its neurosurgery department at SMMC.

13 1.4 Upon information and belief, in order to increase its own profits, PROVIDENCE  
14 instituted a pattern and practice that encouraged Dr. JASON A. DREYER, DO and Dr. DANIEL  
15 ELSKENS DO to conduct unsupervised spine surgeries at high-volume rates using a productivity  
16 metric with no cap on compensation that provided the neurosurgeons financial incentives to  
17 perform a high volume of surgical procedures of greater complexity.

18 1.5 As a result of this pattern and practice, Dr. JASON A. DREYER, DO became one  
19 of the highest producing neurosurgeons in the entire PROVIDENCE system, earning between \$2.5  
20 and \$2.9 million a year for the years he was employed; at one point making him the second highest  
21 paid employee in all of Providence, with only the CEO of the Corporation earning more.

22 1.6 Both neurosurgeons ultimately resigned from PROVIDENCE (Dr. DANIEL  
23 ELSKENS DO on or about May 8, 2017, and Dr. JASON A. DREYER, DO on or about November

1 13, 2018). The resignations came on the heels of internal and DOH administrative investigations  
2 into allegations that the surgeons were performing medically unnecessary and otherwise improper  
3 spine surgeries, and conducting surgical procedures below the standard of care.

4 1.7 After the resignation of Dr. DREYER and Dr. ELSKENS, a third neurosurgeon  
5 employed by SMMC, Dr. David Yam, resigned and filed a complaint under the False Claims Act  
6 alleging Providence, DREYER, and ELSKENS were committing medical billing fraud with  
7 government funded insurance providers.

8 1.8 On April 12, 2022, PROVIDENCE announced a settlement with the United States  
9 Department of Justice (“DOJ”) for \$22.7 million, to resolve allegations that PROVIDENCE  
10 fraudulently billed Medicare, Medicaid, the Washington Health Care Authority, and other  
11 government health care programs for neurosurgery procedures by Dr. JASON A. DREYER, DO  
12 and Dr. DANIEL ELSKENS DO that did not meet criteria for reimbursement, that were medically  
13 unnecessary, or that were otherwise improper.

14 1.9 For the first time, on April 12, 2022, PROVIDENCE admitted publicly that it was  
15 aware of concerns raised by PROVIDENCE personnel about these neurosurgeons’ negligent,  
16 violative, unethical, and fraudulent treatment practices and that it had investigated those concerns,  
17 but that it nonetheless allowed both neurosurgeons to resign rather than report them to the National  
18 Practitioner Data Bank (“NPDB”) or Washington State Department of Health (“WDOH”) as  
19 required by law. For example, under 42 U.S.C. § 11133(a)(1) of the Healthcare Quality  
20 Improvement Act of 1986, and the NPDB guidelines, health care entities are required to report  
21 surrenders of physician clinical privileges while they are under investigation. Under these laws,  
22 PROVIDENCE had a statutory and common law duty to disclose, including to the members of the  
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1 class for their benefit in making material decisions about their healthcare. These failures to  
2 disclose by Defendants were intended to, and did, prevent discovery of their claims by Plaintiffs.

3 1.10 Upon information and belief, PROVIDENCE was aware, or should have been  
4 aware at or near the time of hiring these neurosurgeons that they consistently put patients' health  
5 and safety at dire risk while making decisions based upon personal financial recovery rather than  
6 medical necessity; yet PROVIDENCE actively concealed that information up to and including  
7 failing to report them to the NPDB or the WSDH and allowing the neurosurgeons to depart their  
8 employ with a publicly clean record.

9 1.11 According to the United States Department of Justice, the victims of these  
10 medically unnecessary or otherwise improper surgeries by these neurosurgeons' number in the  
11 "hundreds."<sup>1</sup>

12 1.12 After his resignation from PROVIDENCE, Dr. JASON A. DREYER, DO was  
13 hired by MultiCare Health System in Spokane, Washington [MULTICARE], where he continued  
14 his pattern and practice of negligent, violative, unethical, and fraudulent treatment practices.

15 1.13 Although, upon information and belief, MULTICARE knew or should have  
16 discovered concerns related to Dr. JASON A. DREYER, DO's gross misconduct at  
17 PROVIDENCE through the extensive background investigation that is required before  
18 hiring/retaining a surgeon and providing privileges to practice in its medical facilities, it was  
19 reasonably foreseeable that PROVIDENCE's failure to report Dr. JASON A. DREYER, DO to  
20 the NPDB or WDOH would prevent or delay discovery of the faulty medical care that Dr. JASON

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22  
23 <sup>1</sup> Hill, *Providence to Pay \$22.7 Million to Settle Medicare, Medicaid Fraud Whistleblower Complaint Brought*  
24 *Against two Walla Walla Neurosurgeons*, Spokes. Rev. (April 13, 2022 – updated April 14, 2022)  
<https://www.spokesman.com/stories/2022/apr/13/providence-to-pay-227-million-to-settle-medicare-m/>

1 A. DREYER, DO had provided previous patients to the financial benefit of PROVIDENCE;  
2 which would result in continued harm to future patients; and, would impact the care that his  
3 previous patients received in follow-up to Dr. JASON A. DREYER, DO's faulty and fraudulent  
4 medical care.

5 1.14 In response to the pattern of negligent, violative, unethical, and fraudulent treatment  
6 practices of Dr. JASON A. DREYER, DO under the direct authority of PROVIDENCE, and  
7 fraudulent concealment thereof by all DEFENDANTS, this cause of action is brought by the class  
8 of patients whose lives have been forever changed as a result of the actions or omissions of the  
9 DEFENDANTS herein named.

10 1.15 Filed as a Class Action, this Cause captures the broad body of patients and their  
11 families impacted by the negligent, violative, unethical, and fraudulent treatment practices of Dr.  
12 JASON A. DREYER, DO and Dr. DANIEL ELSKENS, DO under the direct authority of  
13 PROVIDENCE, and fraudulent concealment thereof by all DEFENDANTS, and allows for redress  
14 of those named and unnamed members of the Class.

15 1.16 The Class Action allegations assert claims on behalf of the PROVIDENCE and  
16 MULTICARE patients who suffered damages due to DEFENDANTS' negligent, violative,  
17 unethical, and fraudulent treatment practices which DEFENDANTS concealed from, *inter alia*,  
18 Plaintiffs for their financial gain, in violation of the law.

19 1.17 Set forth herein below, named Plaintiffs designated in Section II as class  
20 representatives ("Class Plaintiffs") bring claims individually and on behalf of the Class.

21 1.18 For purposes of the causes of action, damages, and relief requested in this lawsuit,  
22 all Plaintiffs are referred to collectively, as they have all been the victims of the same course of  
23 conduct by DEFENDANTS detailed below.

## II. PARTIES

2.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 1.18 as if fully set forth herein.

2.2 Plaintiff CAROLINE ANGULO, a single person, representing herself and the Settlement Class, was at all times relevant hereto residing in Walla Walla County, Washington.

2.3 Plaintiff ERIC KELLER, a single person, representing himself and the Non-Settlement Class/Providence, was at all times relevant hereto residing in Union County, Oregon.

2.4 Plaintiffs, ISABEL LINDSEY and CHARLES LINDSEY, representing themselves and the Non-Settlement Class/Multicare, were at all times relevant hereto a married couple, residing in Walla Walla County, Washington.

2.5 Plaintiff CHRISTINE BASH, individually and as personal representative of the ESTATE OF STEVEN BASH, is the surviving wife of STEVEN BASH and the personal representative of the ESTATE OF STEVEN BASH with probate pending in Walla Walla County, representing herself and the ESTATE, is a member of the Settlement Class and was at all times relevant hereto a resident of Walla Walla County, Washington. STEVEN BASH was also a resident of Walla Walla County at the time of his death at the age of 51.

2.6 Plaintiffs, on behalf of themselves and those similarly situated, bring this action against DEFENDANTS for violations of

- RCW 9A.82.080 and 9A.82.100 (Criminal Profiteering)
- RCW 19.86 et seq. (Unfair Business Practices/Consumer Protection) (“CPA”)
- RCW 7.70 et seq. (“Actions for Injuries Resulting from Health Care”), and
- Tort actions, including, without limitation, corporate negligence and statutory duty violations, see RCW 70.41.210, as set forth below.

1           2.7     At all relevant times, each Plaintiff, named and unnamed, was “a person who  
2 sustain[ed] injury to his or her person, business, or property by an act of criminal profiteering that  
3 is part of a pattern of criminal profiteering activity, or by an offense defined in” RCW 9A.82.080.  
4 See RCW 9A.82.100.

5           2.8     At all relevant times, each Plaintiff, named and unnamed, was a “person who was  
6 injured in his or her business or property” by a violation of the CPA. See RCW 19.86.090.

7           2.9     At all relevant times, each Plaintiff, named and unnamed, was a person to whom  
8 DEFENDANTS owed a duty, either through RCW 7.70, corporate negligence, or through common  
9 law/statute, *e.g.*, RCW 70.41.210, which requires hospitals to report to the Department of Health,  
10 any restriction or termination of the practice of a health care practitioner while the practitioner is,  
11 *inter alia*, under investigation or in return for the hospital not taking action.

12           2.10    Defendant PROVIDENCE HEALTH & SERVICES WASHINGTON also d/b/a  
13 PROVIDENCE ST. MARY MEDICAL CENTER (hereinafter PROVIDENCE) is a Washington  
14 nonprofit corporation with its primary place of business located 1801 Lind Avenue, Southwest,  
15 Renton, WA 98057, which is geographically located in King County, Washington.  
16 PROVIDENCE has offices to conduct business, regularly conducts business, and manages medical  
17 facilities across the state of Washington.

18           2.11    At all relevant times hereto, Defendant JASON A. DREYER, DO was a licensed  
19 physician, and citizen of Washington residing in, and practicing medicine in Walla Walla County  
20 or Spokane County, Washington, as an employee or ostensible agent of either PROVIDENCE or  
21 at MultiCare Health System D/B/A MultiCare Deaconess Hospital / Rockwood Clinic (collectively  
22 MULTICARE). At all times relevant hereto, JASON A. DREYER, DO held himself out to be a  
23 medical care provider whose services were offered to the public for compensation. It is unknown  
24

1 if JASON A. DREYER, DO is married, therefor, Plaintiffs allege that if he is married, all acts or  
2 omissions committed by JASON A. DREYER, DO were done both for, and on behalf of, the  
3 community composed of JASON A. DREYER, DO and his wife, JANE DOE DREYER.

4 2.12 At all relevant times hereto, Defendant DANIEL ELSKENS, DO was a licensed  
5 physician, and citizen of Washington, residing in, and practicing medicine in Walla Walla County,  
6 Washington, as an employee or ostensible agent of PROVIDENCE. At all times relevant hereto,  
7 DANIEL ELSKENS, DO held himself out to be a medical care provider whose services were  
8 offered to the public for compensation. It is unknown if DANIEL ELSKENS, DO is married,  
9 therefor, Plaintiffs allege that if he is married, all acts or omissions committed by DANIEL  
10 ELSKENS, DO were done both for, and on behalf of, the community composed of DANIEL  
11 ELSKENS, DO and his wife, JANE DOE ELSKENS.

12 2.13 Upon information and belief, JOHN / JANE DOE employees or agents of  
13 PROVIDENCE (and any spouses/marital communities thereof) reside and/or work in the State of  
14 Washington and include but are not limited to those listed in the 2020 *qui tam* action that resulted  
15 in the 2022 settlement between PROVIDENCE and the DOJ (i.e., PROVIDENCE's Chief Medical  
16 Officer and key PROVIDENCE administrators in Walla Walla, Spokane, and Renton, WA). See  
17 *United States ex rel. Yam v. Providence Health & Services Washington*, Case No. 4:20-cv-05004-  
18 SMJ (E.D. Wash.), Settlement Agreement dated March 2022 (unsealed April 11, 2022).

19 2.14 At all relevant times, DEFENDANTS concealed and otherwise avoided release of  
20 information to the Plaintiffs of their negligent and/or illicit activity with regard to the unnecessary  
21 and/or otherwise improper medical treatments of Dr. JASON A. DREYER, DO and Dr.  
22 DANIELELSKENS, DO, including DEFENDANTS' failure to report the neurosurgeons to proper  
23 authorities as legally required.



1           2.15   At all relevant times, the first notice that any Plaintiff, named and unnamed,  
2 received regarding DEFENDANTS' actions was April 12, 2022 – the day the DOJ announced its  
3 settlement with PROVIDENCE for restitution for false health care payments, and the agreed-upon  
4 upon facts elicited thereto.

### 5                                   **III.     JURISDICTION AND VENUE**

6           3.1     Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
7 incorporate by reference paragraphs 1.1 through 2.15 as if fully set forth herein.

8           3.2     The State of Washington has subject matter jurisdiction over this action pursuant  
9 to RCW 2.08.010 because most alleged acts occurred in this State. In addition, upon information  
10 and belief, more than 2/3 of the members of the proposed class are citizens of Washington.

11          3.3     Jurisdiction and venue are proper in and for the Superior Court of Washington for  
12 King County because at all times relevant hereto, Defendant PROVIDENCE's controlling  
13 business offices were located in King County, Washington and removal to federal court is not  
14 authorized or justified under 28 U.S.C. § 1453.

### 15                                   **IV.     TIMELINE AND FACTS**

16          4.1     Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
17 incorporate by reference paragraphs 1.1 through 3.3 as if fully set forth herein.

18          4.2     Between July 1, 2013, and November 13, 2018, PROVIDENCE employed Dr.  
19 JASON A. DREYER, DO as a neurosurgeon at SMMC in Walla Walla.

20          4.3     PROVIDENCE employed Dr. DANIEL ELSKENS, DO between November 2015  
21 and May 2017 as a neurosurgeon at SMMC in Walla Walla.

22          4.4     Upon information and belief, PROVIDENCE encouraged Dr. JASON A.  
23 DREYER, DO and Dr. DANIEL ELSKENS, DO to perform a high volume of surgical procedures

1 of greater complexity to increase PROVIDENCE profits.

2 4.5 Upon information and belief, PROVIDENCE encouraged Dr. JASON A.  
3 DREYER, DO and Dr. DANIEL ELSKENS, DO to conduct spine surgeries at high-volume rates  
4 by applying a productivity bonus metric that provided the surgeons financial incentive to perform  
5 a high volume of surgical procedures of greater complexity.

6 4.6 Upon information and belief, Dr. JASON A. DREYER, DO and Dr. DANIEL  
7 ELSKENS, DO did conduct complex spine surgeries at high-volume rates with intent and purpose  
8 of collecting productivity incentive money.

9 4.7 DEFENDANTS' actions resulted in the performance of medical treatments that did  
10 not meet criteria for health care insurance reimbursement, that were medically unnecessary, or that  
11 were otherwise improper, for which improper submissions for payment to health insurance entities  
12 occurred, including to e.g., Medicare and Medicaid, all for DEFENDANTS' financial benefit.

13 4.8 Dr. DANIEL ELSKENS, DO resigned from PROVIDENCE on or about May 8,  
14 2017.

15 4.9 Upon information and belief, Dr. DANIEL ELSKENS, DO's resignation was  
16 triggered, at least in part, by allegations that he was performing unnecessary surgeries in order to  
17 capitalize on the PROVIDENCE productivity bonus metric.

18 4.10 Dr. JASON A. DREYER, DO resigned from PROVIDENCE on or about  
19 November 13, 2018.

20 4.11 Upon information and belief, Dr. JASON A. DREYER, DO's resignation was  
21 triggered, at least in part, by allegations that he was performing unnecessary surgeries in order to  
22 capitalize on the PROVIDENCE productivity bonus metric.

1           4.12   After November 13, 2018, and until March 2021, Dr. JASON A. DREYER, DO  
2 worked for MULTICARE as an employee and/or contractor. While at MULTICARE, Dr. JASON  
3 A. DREYER, DO continued the pattern and practice established at PROVIDENCE of conducting  
4 high-volume surgeries that did not meet criteria for health care insurance reimbursement, that were  
5 medically unnecessary, or that were otherwise improper, all for the financial benefit of Dr. JASON  
6 A. DREYER, DO and MULTICARE.

7           4.13   On January 10, 2020, Dr. David Yam, M.D., as Relator, and on behalf of the United  
8 States and Washington State, filed a complaint (the 2020 *qui tam* complaint) in the Eastern District  
9 of Washington, alleging violations of the False Claims Act against PROVIDENCE. See *United*  
10 *States ex rel. Yam v. Providence Health & Services Washington*, Case No. 4:20-cv-05004.  
11 (Complaint attached as Exhibit 1).

12           4.14   The allegations in the 2020 *qui tam* complaint was based upon the fraudulent billing  
13 for medically unnecessary and otherwise improper care provided by PROVIDENCE via its agents  
14 / employees Dr. JASON A. DREYER, DO and Dr. DANIEL ELSKENS, DO.

15           4.15   As statutorily required, this 2020 *qui tam* complaint was filed under seal.

16           4.16   By notice dated January 13, 2022, the United States Justice Department intervened  
17 in the 2020 *qui tam* complaint. This also was done under seal and not made public, per statute.

18           4.17   The 2020 *qui tam* complaint alleged, and PROVIDENCE later admitted salient  
19 facts showing PROVIDENCE was billing the federal and state governments for these  
20 neurosurgeons' medical services that did not meet criteria for reimbursement, were medically  
21 unnecessary, and/or were otherwise improper.

22           4.18   On or about March 17, 2022, PROVIDENCE entered into a Settlement Agreement  
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(SA) with the United States Government and the State of Washington.<sup>2</sup> The agreement calls for PROVIDENCE to pay a total of \$22,690,458 (\$10,459,388 of which is specified as restitution) along with remedies and protocols to ensure, *inter alia*, patients' future safety. The SA does not require any payment from Drs. Dreyer or Elskens.

4.19 As detailed in the SA, Dr. JASON A. DREYER, DO was accused of (a) falsifying, exaggerating, and/or inaccurately diagnosing patients' true medical conditions in order to obtain reimbursement for surgical procedures performed by him; (b) performing certain surgical procedures that did not meet the medical necessity guidelines and requirements for reimbursement set forth by Medicare and other government health insurance programs; (c) "over-operating," i.e., performing a surgery of greater complexity and scope than was indicated and medically appropriate; (d) jeopardizing patient safety by attempting to perform an excessive number of overly complex surgeries; (e) endangering patients' safety; (f) creating an excessive level of complications, negative outcomes, and necessary additional operations as a result of their surgeries; (g) performing surgical procedures on certain candidates who were not appropriate candidates for surgery given their medical histories, conditions, and contraindications; and (h) failing to adequately and accurately document certain procedures, diagnoses, and complications. Also as detailed in the SA, Dr. DANIEL ELSKENS, DO was accused of Items (e) through (h).

4.20 As detailed in the SA, PROVIDENCE accepted payments from federal and state health care sources (e.g., Medicare, Medicaid, the FEHBP, TRICARE, and VA Community Care) while being aware of these allegations against these neurosurgeons.

4.21 These facts were stipulated by PROVIDENCE in the SA as true and accurate.

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<sup>2</sup> See Settlement Agreement Attached as Exhibit 2.

1           4.22   Through this pattern and practice, Dr. JASON A. DREYER, DO was one of the  
2 highest producing neurosurgeons in the entire 7-state PROVIDENCE system, earning between  
3 \$2.5 and \$2.9 million a year for the years where he was employed.

4           4.23   According to the SA, despite knowledge of these neurosurgeons' misconduct, and  
5 despite placing them each on administrative leave due to concerns listed in paragraph 4.19 above,  
6 PROVIDENCE allowed Dr. DANIEL ELSKENS, DO and Dr. JASON A. DREYER, DO to resign  
7 instead of terminating their employment.

8           4.24   According to the SA, despite having knowledge of these neurosurgeons'  
9 misconduct, PROVIDENCE reported neither neurosurgeon to legal authorities (e.g., NPDB or  
10 WDOH). This occurred despite the legal obligation to report, see 42 U.S.C. § 11133(a)(1) and  
11 RCW 70.41.210.

12           4.25   According to the SA, despite having knowledge of these neurosurgeons'  
13 misconduct, PROVIDENCE took no action to refund Medicare or Medicaid for surgical  
14 procedures performed by either Dr. DANIEL ELSKENS, DO or Dr. JASON A. DREYER, DO  
15 for which PROVIDENCE had previously sought and received reimbursement.

16           4.26   Upon information and belief, PROVIDENCE also:

17                   4.26.1   accepted payments from private insurance health care sources using similar  
18 or the same criteria for payment/non-payment of surgeries (including requirements that  
19 medical treatment be necessary or be otherwise proper);

20                   4.26.2   did so while being or becoming aware of the allegations against these  
21 neurosurgeons as outlined above and in the 2020 *qui tam* complaint and the SA; and

22                   4.26.3   took no action at any time to refund any private insurance health care source  
23 or any self-funded patients for any surgical procedures performed by either Dr. DANIEL  
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1 ELSKENS, DO or Dr. JASON A. DREYER, DO for which PROVIDENCE had previously  
2 sought and received reimbursement.

3 4.27 Upon information and belief, PROVIDENCE was aware or should have been aware  
4 at or near the time of hiring these neurosurgeons that the neurosurgeons put patients at dire risk  
5 and performed these kinds of medically unnecessary or otherwise improper procedures, yet  
6 PROVIDENCE presumably concealed that information and any and all of its knowledge regarding  
7 this unprofessional conduct until April 12, 2022, when the Settlement Agreement was made public.

8 4.28 In addition to the agreed-upon Settlement Agreement statements regarding  
9 DANIEL ELSKENS, DO, the 2020 *qui tam* complaint specifically alleged as follows:

10 4.28.1 The relator, Dr. Yam, alleged that he reviewed Dr. Elskens' work; the  
11 review revealed Dr. Elskens committed severe surgical errors, including by operating on  
12 incorrect spinal sections, resulting in post-operation complications necessitating  
13 emergency remedial surgery;

14 4.28.2 Dr. Yam reported the errors to Providence's chief medical officer,  
15 recommending that Dr. Elskens be terminated;

16 4.28.3 Providence, after rejecting the recommendation, suspended Dr. Elskens  
17 when Dr. Yam discovered Dr. Elskens botched an additional surgery, nearly paralyzing the  
18 patient nearly a year later after many more patients were adversely harmed.

19 4.29 In addition to the agreed-upon Settlement Agreement statements regarding JASON  
20 A. DREYER, DO, the 2020 *qui tam* complaint specifically alleged:

21 4.29.1 After Providence failed to take seriously his initial allegations against Dr.  
22 Elskens, Dr. Yam began reviewing the work of his fellow neurosurgeon with greater  
23 scrutiny and, as such reviewed the work of Dr. Jason Dreyer because Dr. Dreyer, who  
24

1 studied under Dr. Elskens, spoke highly of Dr. Elskens and recommended Dr. Elskens to  
2 join the group in Walla Walla;

3 4.29.2 Dr. Yam's review of Dr. Dreyer revealed that Providence (through Dr.  
4 Dreyer) was billing the federal government for medical services which neither Dr. Dreyer  
5 nor Providence performed; in addition, Dr. Dreyer was fabricating patient diagnoses and  
6 treatments to justify complex operations and to increase billing and reimbursement for both  
7 himself and Providence; Dr. Dreyer would knowingly, and routinely, falsify patient records  
8 to justify as medically necessary certain expensive surgical procedures; Providence and Dr.  
9 Dreyer carried out this improper practice by subjecting patients to risky procedures that  
10 were legitimized through fraudulent diagnoses;

11 4.29.3 In one instance, for example, Providence and Dr. Dreyer claimed a patient  
12 receiving federally funded treatment suffered from a severe deformity that required  
13 complex surgery, which Dr. Dreyer performed at great risk to the patient when, in fact, the  
14 deformity was documented not to exist in the patient;

15 4.29.4 Dr. Yam believed, and alleged, that Dr. Dreyer's improper practices  
16 provided a windfall to Providence at the federal government's expense which likely  
17 amounted to tens of millions of dollars and likely more;

18 4.29.5 When Dr. Yam initially reported his concerns to Providence in November  
19 2017, Providence assured him action would be taken but that action was insufficient,  
20 causing Dr. Yam to allege that the response was designed to allow Providence to continue  
21 to benefit from the aforementioned windfall;

22 4.29.6 Dr. Dreyer continued his same pattern and practice until Dr. Yam again  
23 complained in April 2018, explicitly using the words "fraud," "malpractice," and "harm"

1 in emails to key Providence administrators in Walla Walla, Spokane, and Renton,  
2 Washington.

3 4.29.7 Providence responded to Dr. Yam's renewed complaint through a flawed  
4 investigation which, Dr. Yam was told, revealed no evidence of false billing, yet  
5 Providence administrators allowed for the voluntary suspension of Dr. Dreyer

6 4.30 Historically, repeatedly, and currently, PROVIDENCE sets itself out to the public  
7 in its promotional material as a caring, moral, health care provider with integrity that puts patients'  
8 needs first (not its own financial gain). For example, it has made the following public statements:

9 4.30.1 "We strive to do what's right for people, all people, but especially the poor  
10 and vulnerable."

11 4.30.2 "We don't take the easiest answer, we look for the right answer."

12 4.30.3 "Integrity means you are always approaching things with a moral  
13 viewpoint. In our case, a moral viewpoint that is adjusted for the benefit of the many, and  
14 not the few."

15 4.30.4 "At Providence we see more than patients, we see the life that pulses  
16 through us all. That's why we're dedicated to a holistic approach to medicine that employs  
17 not only the most advanced treatments to improve outcomes, but also puts compassion and  
18 humanity at the heart of every interaction."

19 4.30.5 "We use our voice to advocate for vulnerable populations and needed  
20 reforms in health care. We are also pursuing innovative ways to transform health care by  
21 keeping people healthy, and making our services more convenient, accessible and  
22 affordable for all. In an increasingly uncertain world, we are committed to high-quality,  
23 compassionate health care for everyone, regardless of coverage or ability to pay. We help  
24



1 people and communities benefit from the best health care model for the future – today.”

2 4.30.6 “As a comprehensive health care organization, we are serving more people,  
3 advancing best practices, and continuing our more than 100-year tradition of serving the  
4 poor and vulnerable. Delivering services across seven states, Providence is committed to  
5 touching millions of more lives and enhancing the health of the American West to  
6 transform care for the next generation and beyond.”

7 4.30.7 “We set the highest standards for ourselves and our ministries. Through  
8 transformation and innovation, we strive to improve the *health* and quality of life...”

9 4.31 These representations were and are designed to entice the public to rely upon  
10 PROVIDENCE for medical care without reservation or concern about PROVIDENCE’s care and  
11 protection of their best and highest health.

12 4.32 Rather than inform Plaintiffs and the public of the scheme at SMMC of, *inter alia*,  
13 medically unnecessary surgeries for financial gain (described herein), PROVIDENCE concealed  
14 the scheme and maintained secrecy, to the extent of failing to report the neurosurgeons, including  
15 those under investigation, to proper authorities, and did so to maintain at all costs its squeaky-clean  
16 public persona, thus engaging in deceptive and unfair acts in order to market its health care services  
17 to new patients.

18 4.33 Even today, PROVIDENCE continues to engage in deceptive and unfair acts by  
19 publicly minimizing the SMMC situation (including the \$22.7 million settlement and the safety  
20 precautions it now must implement across all its facilities) by falsely calling it an “isolated incident  
21 in Walla Walla” on April 12, 2022, despite the extensive damage done to its patients, despite its  
22 fiduciary obligations to those patients, and despite the fact that senior administrators from Walla  
23 Walla, Spokane, and Renton headquarters were informed about Walla Walla as early as 2018. A

1 true and correct copy of this April 12, 2022 Statement is attached as Exhibit 3.

2 4.34 Since the filing of the Class Action Complaint on May 16, 2022, PROVIDENCE  
3 continued to engage in its deceptive and unfair acts by publishing a full-page advertisement on  
4 June 5, 2022, in the Walla Walla Union Bulletin that minimizes, misleads, and/or inaccurately  
5 describes the aforementioned events and PROVIDENCE's responsibility therein, including its  
6 fiduciary duties to patients. A true and correct copy of this June 5, 2022 full-page advertisement  
7 is attached as Exhibit 4.

8 4.35 PROVIDENCE's profit over patient safety practice ultimately resulted in patients  
9 of PROVIDENCE and MULTICARE suffering permanent, debilitating harm as a result of  
10 neurosurgeons Dr. DANIEL ELSKENS, DO and Dr. JASON A. DREYER, DO's negligent,  
11 violative, unethical, and fraudulent treatment practices; the value of which will be set forth fully  
12 at trial.

13 4.36 By and through their fraudulent, violative, unethical, and negligent practices,  
14 PROVIDENCE's continued profit over patient safety practice resulted in actual financial loss to  
15 the named Plaintiff's and associated class of Plaintiffs as set forth herein in dollar amounts that  
16 will be set forth fully at trial.

17 **V. INDIVIDUAL PLAINTIFFS / CLASS REPRESENTATIVES**

18 5.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
19 incorporate by reference paragraphs 1.1 through 4.36 as if fully set forth herein.

20 5.2 Facts associated with individual class representatives as set forth below are  
21 representative of medical negligence, and deceptive patterns and practices employed by  
22 DEFENDANTS, to entice patients into agreeing to medically unnecessary or otherwise improper  
23 surgical procedures and related medical care.

**CAROLINE ANGULO**

5.3 Plaintiff CAROLINE ANGULO, 59 years old, was a patient of PROVIDENCE at SMMC, whose surgery was negligent, medically unnecessary or otherwise improper, and whose medical expenses should either be a part of the Settlement Agreement restitution or would have been if the DOJ and PROVIDENCE had not settled.

5.4 Ms. ANGULO's insurance at all relevant times was Medicare or Medicaid.

5.5 In or around the spring of 2016, Ms. ANGULO consulted with Dr. DANIEL ELSKENS, DO at SMMC because she was experiencing lower back pain.

5.6 During the consultation, Dr. ELSKENS informed Ms. ANGULO that, in his opinion, her neck looked worse than her back, and he recommended cervical surgery instead of lumbar surgery.

5.7 Based on, and in reliance of, the advice and stated opinion of Dr. ELSKENS, DO, Ms. ANGULO agreed to the cervical surgery.

5.8 Ms. ANGULO's cervical surgery took place on or about April 25, 2016. The procedure, performed by Dr. ELSKENS, DO, included cervical fusion at levels C5 through C7, and was performed using the anterior approach only. He also did a carpal tunnel surgery during the same surgery.

5.9 The surgery went poorly. Ms. ANGULO had to remain in the hospital for over a month. Her vocal cords were damaged, and she could not speak. She has never recovered from this surgery. Moreover, during her follow-up treatment, Dr. ELSKENS, DO was suddenly unavailable, leaving Ms. ANGULO without a neurosurgeon.

5.10 Upon information and belief, this was a negligent, medically unnecessary and/or otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its

1 agent / employee DANIEL ELSKENS, DO, to perform such unnecessary or otherwise improper  
2 procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Ms.  
3 ANGULO.

4 5.11 In or around the fall of 2017, Ms. ANGULO's primary care provider referred her  
5 to Dr. JASON A. DREYER, DO, at SMMC because of her continuing lower back pain. During  
6 the consultation, Dr. JASON A. DREYER, DO, informed Ms. ANGULO that he saw a "big  
7 problem" with her neck that required more surgery.

8 5.12 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms.  
9 ANGULO agreed to his recommendation.

10 5.13 On or about November 18, 2017, Dr. DREYER performed a cervical/thoracic  
11 fusion on Ms. ANGULO. This surgery was both anterior and posterior according to what the  
12 hospital provided her, the fusion ranged from either levels C3 through C7, or C3 through T2 – she  
13 was provided with medical ID cards for both.

14 5.14 Upon information and belief, this was a negligent, medically unnecessary and/or  
15 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its  
16 agent / employee JASON A. DREYER, DO, to perform such medically unnecessary or otherwise  
17 improper procedures for the purpose of financial gain, resulting in foreseeable, permanent damages  
18 to Ms. ANGULO.

19 5.15 As a result of these unnecessary and otherwise improper surgeries, Ms. ANGULO  
20 has suffered and continues to suffer general and special permanent damages, including but not  
21 limited to: job loss (she had been a Certified Nursing Assistant for over 15 years prior to the  
22 surgeries); a designation of disability (SSDI); inability to walk; sitting, standing and laying are all  
23 difficult; nerve problems; and choking when she eats (she must stay calm in order for her food to

1 go down). Her pain levels range from a level of 6 on a good day to a 10 on a bad day (1 being  
2 minimal pain and 10 being unbearable pain). She continues to have no relief for her pain and is  
3 permanently damaged. Botox treatments for her constant pain made her unable to breathe and  
4 required three paramedic-transported emergency trips to the hospital.

5 5.16 Prior to April 12, 2022, Ms. ANGULO was unaware of PROVIDENCE's  
6 admission of salient facts as outlined herein and in its settlement with the DOJ.

7 5.17 Upon information and belief, on a more likely than not basis, the damage done by  
8 PROVIDENCE, DANIEL ELSKENS, DO, and JASON A. DREYER, DO through their negligent,  
9 medically unnecessary, and otherwise improper procedures to Ms. ANGULO is permanent and  
10 irreversible.

11 **ERIC KELLER**

12 5.18 Plaintiff ERIC KELLER, 56 years old, was a patient of PROVIDENCE at SMMC,  
13 whose surgery was negligent, medically unnecessary or otherwise improper. Mr. KELLER's  
14 insurance at all relevant times was the private insurance company of Regence Blue Shield of  
15 Oregon.

16 5.19 In or around the summer of 2017, Mr. KELLER consulted with PROVIDENCE via  
17 its agent / employee JASON A. DREYER, DO at SMMC because he was experiencing lower back  
18 pain.

19 5.20 While discussing the pain and discomfort in his lower back, JASON A. DREYER,  
20 DO and Mr. KELLER discussed a prior cervical fusion Mr. KELLER had many years ago that  
21 was successful, and was causing him no pain or difficulty.

22 5.21 JASON A. DREYER, DO advised Mr. KELLER that what he really needed was  
23 surgery on his neck before any lumbar surgery.

1           5.22   When Mr. KELLER advised Dr. DREYER “my neck isn’t the problem,” Dr.  
2 DREYER informed him he had more wrong with his neck than he thought he did. Dr. Dreyer  
3 went on to tell Mr. KELLER his neck was so unstable that he risked paralysis during any proposed  
4 lumbar surgery if he did not agree to the cervical surgery first. Dr. DREYER informed him he  
5 would be turning him during the lumbar surgery and it would put pressure on the cervical spine  
6 when he did this while under anesthesia.

7           5.23   Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, and  
8 fearing paralysis, Mr. KELLER agreed to the cervical surgery.

9           5.24   Mr. KELLER’s cervical surgery took place in or around August 2017. Following  
10 this procedure, Mr. KELLER was not able to return to work.

11          5.25   Upon information and belief, this was a medically unnecessary or otherwise  
12 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /  
13 employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the  
14 purpose of financial gain, resulting in foreseeable, permanent damages to Mr. KELLER.

15          5.26   Following the cervical spine surgery, Mr. KELLER again asked Dr. DREYER to  
16 look at his lumbar region. Dr. DREYER told Mr. KELLER he needed surgery on the lumbar  
17 spine.

18          5.27   Thereafter, Mr. KELLER’s insurance, Regence Blue Shield, would not clear  
19 coverage for the procedure proposed.

20          5.28   On or about January 12, 2018, Dr. DREYER told Mr. KELLER the insurance  
21 company did not want to cover the surgery. Dr. Dreyer told Mr. KELLER to come in to his office  
22 the morning of January 17, and he (Dr. DREYER) would send him to the emergency room.  
23 According to Dr. DREYER, the insurance company would have to pay for the procedure because

1 it would be indicated as an “emergency procedure.”

2 5.29 Mr. KELLER followed the direction of Dr. DREYER. He was admitted to SMMC  
3 through the emergency department.

4 5.30 On or about January 18, 2018, Dr. DREYER performed the lumbar surgery.

5 5.31 This surgery caused permanent and debilitating nerve damage.

6 5.32 Upon information and belief, PROVIDENCE via its agent / employee Dr. JASON  
7 A. DREYER, DO, conducted this unnecessary or otherwise improper surgery on an emergency  
8 basis in order to avoid insurance pre-authorization and to force Regence Blue Shield (Mr.  
9 KELLER’s private health insurer) to pay for the procedure without formal pre-authorization.

10 5.33 Upon information and belief, this was a medically unnecessary or otherwise  
11 improper procedure that was part of a pattern and practice of PROVIDENCE via its agent /  
12 employee JASON A. DREYER, DO, to perform such medically unnecessary/improper procedures  
13 for the purpose of financial gain, resulting in foreseeable, permanent damages to Mr. KELLER.

14 5.34 As a result of these unnecessary and otherwise improper surgeries, Mr. KELLER  
15 has suffered and continues to suffer general and special permanent damages, including but not  
16 limited to: job loss (from Boise Cascade); a designation of disability (SSD); constant pain and  
17 discomfort; constant groin sensitivity and pain; pain radiating down both legs into his feet; muscle  
18 lock-ups (making him bedridden for days); significant difficulty walking; inability to sleep, sit or  
19 stand for any period of time; fatigue; anxiety, and depression. He is on pain medication daily.

20 5.35 Prior to April 12, 2022, Mr. KELLER was unaware of PROVIDENCE’s admission  
21 of salient facts as outlined herein and in its settlement with the DOJ.

22 5.36 Upon information and belief, on a more likely than not basis, the damage done by  
23 PROVIDENCE and JASON A. DREYER, DO to Mr. KELLER is permanent and irreversible.

**ISABEL LINDSEY**

5.37 Plaintiff ISABEL LINDSEY, 60 years old, married to Plaintiff CHARLES LINDSEY, was a patient of JASON A. DREYER, DO at PROVIDENCE at SMMC, as well as a patient of Dr. DREYER, DO after he left PROVIDENCE and began practicing at MULTICARE in Spokane, Washington.

5.38 Ms. LINDSEY underwent four (4) surgeries – all conducted by DR. DREYER.

5.39 These surgeries, each and all, were negligent, medically unnecessary or otherwise improper.

5.40 Ms. LINDSEY's government-paid medical costs were either (a) a part of the Settlement Agreement restitution or would have been if the DOJ and PROVIDENCE had not settled or (b) not part of the Settlement Agreement restitution because they were incurred through treatment at MULTICARE and the DOJ sought reimbursement of payments from PROVIDENCE only.

5.41 Ms. LINDSEY's insurance at all relevant times was Medicare or Humana.

5.42 Prior to surgical procedures performed by Dr. DREYER, Ms. LINDSEY's personal medical history included comorbidity conditions that are generally considered contraindications when contemplating spine surgery.

5.43 Between 2014 and 2020, Dr. DREYER performed four surgeries on Ms. LINDSEY – three (in 2015, 2015, and 2017) as an agent / employee of PROVIDENCE and one (in 2020) as an agent / employee of MULTICARE in Spokane, Washington. After each surgery, he prescribed Ms. LINDSEY hydrocodone and valium daily for three months.

5.44 During his treatment of Ms. LINDSEY, Dr. DREYER informed her that, if she ever had imaging, she was to bring her images to him because he had taken special classes to be able



1 to read images, and that as a result of these advanced courses, he was more skilled than other  
2 neurosurgeons, so he would see things on the images that other neurosurgeons wouldn't know.

3 5.45 *As to the first surgery:* in or around the end of 2014, Ms. LINDSEY consulted with  
4 Dr. DREYER after an altercation (a slap to the face), due to neck soreness with no radiculopathy  
5 and prior to any treatments such as physical therapy, injections, or any other conservative  
6 treatments.

7 5.46 During the consultation, Dr. DREYER informed Ms. LINDSEY that surgery was  
8 necessary, and that she would be able to return to her normal routine after surgery.

9 5.47 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms.  
10 LINDSEY agreed to the surgery.

11 5.48 Ms. LINDSEY's surgery, fusing levels C4-C7 using the anterior approach, took  
12 place in or around January 2015.

13 5.49 Upon information and belief, this was a negligent, medically unnecessary, or  
14 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its  
15 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures  
16 for the purpose of financial gain, ultimately resulting in foreseeable, permanent damages to Ms.  
17 LINDSEY.

18 5.50 *As to the second surgery:* Later in 2015, Dr. DREYER informed Ms. LINDSEY  
19 that her prior fusion didn't fuse and that he had to redo the surgery.

20 5.51 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms.  
21 LINDSEY agreed to the surgery.

22 5.52 This surgery took place in or around December 2015 with Dr. DREYER, DO,  
23 fusing C3 through T2, using a posterior approach.

1           5.53   Upon information and belief, this was a negligent, medically unnecessary, or  
2 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its  
3 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures  
4 for the purpose of financial gain, ultimately resulting in foreseeable, permanent damages to Ms.  
5 LINDSEY.

6           5.54   Ms. LINDSEY has experienced pain, discomfort and disability since this surgery.

7           5.55   *As to the third surgery:* In 2017, after having some lumbar pain after a motor vehicle  
8 accident, Ms. LINDSEY again consulted with Dr. DREYER, who told her she needed a level L5  
9 through S1 fusion. Again, based on, and in reliance of, this advice and stated opinion, she agreed  
10 to the surgery.

11          5.56   After this surgery, Dr. DREYER informed Ms. LINDSEY that she would need her  
12 bottom four vertebrae fused at a later date, causing her to believe she would need more procedures  
13 in the future.

14          5.57   Upon information and belief, this third surgery was a negligent, medically  
15 unnecessary, or otherwise improper procedure that was part of a pattern and practice of  
16 PROVIDENCE via its agent / employee JASON A. DREYER, DO, to perform such  
17 unnecessary/improper procedures for the purpose of financial gain, ultimately resulting in  
18 foreseeable, permanent damages to Ms. LINDSEY.

19          5.58   *Ms. Lindsey's fourth surgery* was conducted by Dr. DREYER at MULTICARE.

20          5.59   Ms. LINDSEY was involved in a motor vehicle accident in 2018. She sought  
21 consultation from Dr. DREYER at SMMC but could not locate him there. She consulted instead  
22 with Dr. David Yam, an agent / employee of PROVIDENCE at that time, who recommended  
23 against further surgery.

1           5.60   In his report dated January 9, 2019, Dr. Yam opined that before Ms. LINDSEY's  
2 first surgery, her MRI had "essentially no neck pathology." He further opined that he was  
3 "uncertain as to the indication for her 2015 revision surgery as well" (i.e., the second surgery) "as  
4 again she had no significant nerve compression on these images" and that her "revision fusion was  
5 less than a year after her initial operation." He also opined that a review of her 2018 CT and MRI  
6 results showed "no nerve compression of significance remaining in her neck at this time that would  
7 warrant additional surgery," calling the past surgeries "massive", and inferring unnecessary.

8           5.61   Despite these opinions, Dr. Yam also stated in his report that "she can and should  
9 seek evaluation with Dr. Dreyer ..."

10          5.62   After this visit, PROVIDENCE sent Ms. LINDSEY a letter stating she could not  
11 return to the clinic.

12          5.63   Based on, and in reliance of, the advice and stated opinion of PROVIDENCE, via  
13 its agent / employee Dr. David Yam regarding that she "can and should seek evaluation with" Dr.  
14 JASON A. DREYER, DO, Ms. LINDSEY ultimately located Dr. JASON A. DREYER in  
15 Spokane, at MULTICARE / Deaconess Hospital.

16          5.64   Dr. DREYER performed a fourth surgery on Ms. LINDSEY on or about October  
17 29, 2020. In this surgery, Dr. DREYER, as an employee / agent of MULTICARE (who had  
18 previously warranted to Ms. LINDSEY that he has "special skills" for reading images that other  
19 neurosurgeons did not possess) reconstructed his past fusion at levels C3 and C4 contending they  
20 were out of alignment. He replaced old hardware with new hardware, and gave her the metal  
21 hardware, which she still has. In this final surgery, MULTICARE abruptly failed to refill her  
22 medication, causing her severe pain and requiring the help of her primary care physician to obtain  
23 medication of 7 hydrocodone a day and 200 milligrams of Lyrica twice a day, medication on which

1 she remains today.

2 5.65 Upon information and belief, this fourth surgery was a negligent, medically  
3 unnecessary or otherwise improper procedure that was part of a pattern and practice of  
4 PROVIDENCE via its agent / employee JASON A. DREYER, DO that was then continued at  
5 MULTICARE, to perform such negligent, medically unnecessary, or otherwise improper  
6 procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Ms.  
7 LINDSEY.

8 5.66 As a result of all four of these unnecessary and otherwise improper surgeries, Ms.  
9 LINDSEY has suffered and continues to suffer general and special permanent damages, including  
10 but not limited to: Limitation of movement (she used to be athletic but now she is not – e.g., she  
11 can't wash her hair without pain, do laundry, or empty a dishwasher); constant pain; fibromyalgia;  
12 depression; lack of motivation; and memory issues.

13 5.67 Prior to April 12, 2022, Ms. LINDSEY was unaware of PROVIDENCE's  
14 admission of salient facts as outlined herein and in its settlement with the DOJ.

15 5.68 Upon information and belief, on a more likely than not basis, the damage done by  
16 PROVIDENCE and JASON A. DREYER, DO to Ms. LINDSEY is permanent and irreversible.

17 **STEVEN BASH AND CHRISTINE BASH**

18 5.69 STEVEN BASH, the deceased, married to CHRISTINE BASH, was a patient of  
19 JASON A. DREYER, DO at PROVIDENCE at SMMC.

20 5.70 Mr. BASH underwent three (3) surgeries – all conducted by DR. DREYER.

21 5.71 Upon information and belief, these surgeries – and, at a minimum, the second and  
22 third surgeries – were negligent, medically unnecessary, or otherwise improper.

23 5.72 Mr. BASH's government-paid medical costs were a part of the Settlement  
24

1 Agreement restitution or would have been if the DOJ and PROVIDENCE had not settled.

2 5.73 Upon information and belief, Mr. BASH's insurance at all relevant times was  
3 through the L&I federal insurance system (that is, the Office of Workers Compensation).

4 5.74 Prior to surgical procedures performed by DR. DREYER, Mr. BASH's personal  
5 medical history included comorbidity conditions that are generally considered contraindications  
6 when contemplating spine surgery, including that he was a smoker and including his condition of  
7 opioid dependence due to every-day use, a condition he sought to control.

8 5.75 Upon information and belief, Mr. BASH began consulting with Dr. DREYER in  
9 2014 through 2016 after a work-related injury resulted in a combination of leg/groin and back pain,  
10 with radiating leg pain being greater than or equal to 75% of his symptoms. Upon information  
11 and belief, Dr. DREYER did not have a third-party present to assist Mr. BASH in making informed  
12 consent decisions to any treatment recommendations made by Dr. DREYER, even though Dr.  
13 DREYER knew or should have known that Mr. BASH's contraindications, including opioid  
14 dependence, would more likely than not interfere with his ability to give informed consent.

15 5.76 *As to the first surgery:* Upon information and belief, Dr. DREYER initially  
16 recommended conservative care before surgery and then recommended, and performed, a one-  
17 level microdiscectomy of L2-L3 and a laminectomy of L3-L4, both of which Dr. DREYER termed  
18 "minimally invasive."

19 5.77 Upon information and belief, based on, and in reliance of, the advice and stated  
20 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

21 5.78 This surgery took place in or around October 2014. After this surgery, upon  
22 information and belief, Mr. BASH was in consistent pain, and no longer could sleep well because  
23 of the pain.

1           5.79   Upon information and belief, this surgery was the first step towards subsequent  
2 surgeries; it was the start of Mr. BASH becoming one of Dr. DREYER's repeat, multiple-surgery  
3 victims; and it became a part of a pattern and practice of PROVIDENCE via its agent / employee  
4 JASON A. DREYER, DO, to perform negligent, medically unnecessary, or otherwise improper  
5 procedures for the purpose of financial gain, ultimately resulting in foreseeable, permanent  
6 damages to Mr. BASH, and to the ESTATE OF STEVEN BASH, and to CHRISTINE BASH,  
7 individually as Mr. BASH's surviving wife, and as personal representative of the ESTATE OF  
8 STEVEN BASH.

9           5.80   *As to the second surgery:* Upon information and belief, Dr. DREYER determined  
10 that Mr. BASH was doing "poorly;" stated that his issues were "as bad, if not worse than before  
11 surgery;" and proposed the following extensive and radical surgery despite the comment of Derek  
12 Sucharda, Dr. DREYER's PA-C at the time, that Mr. BASH was "quite young to have such a large  
13 surgery": an anterior lumbar interbody arthrodesis, L1-2, L2-3, L3-4 from the lateral approach;  
14 posterolateral arthrodesis, L1-2, L2-3, L3-4; combined posterior interbody and posterolateral  
15 arthorodesis, L4-5, L5-S1; PEEK interbody L1-2, L2-3, L3-4, L4-5, L5-S1; posterior spinal  
16 instrumentation, L1-S1; and laminectomies L1, L2, L3, L4, L5, S1 for decompression. Upon  
17 information and belief, Dr. DREYER proposed this surgery as treatment for the images but not the  
18 patient and failed to take proper (or any) steps to determine the risk assessment to such an extensive  
19 surgery and/or to determine the origins/generators of Mr. BASH's pain and discomfort before  
20 proposing such an extensive and invasive surgery.

21           5.81   Upon information and belief, Dr. DREYER did not have a third-party present to  
22 assist Mr. BASH in making informed consent decisions to any treatment recommendations made  
23 by Dr. DREYER, even though Dr. DREYER knew or should have known that Mr. BASH's  
24

1 contraindications, including opioid dependence, would more likely than not interfere with his  
2 ability to give informed consent.

3 5.82 Upon information and belief, based on, and in reliance of, the advice and stated  
4 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

5 5.83 This surgery took place in or around January 2016. Upon information and belief,  
6 Mr. BASH woke up from this surgery screaming and crying, in unbearable pain.

7 5.84 Upon information and belief, this was a negligent, medically unnecessary, or  
8 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its  
9 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures  
10 for the purpose of financial gain, ultimately resulting in permanent damages to Mr. BASH, and to  
11 the ESTATE OF STEVEN BASH, and to CHRISTINE BASH, individually as Mr. BASH's  
12 surviving wife and as personal representative of the ESTATE OF STEVEN BASH.

13 5.85 *As to the third surgery:* Upon information and belief, in response to Mr. BASH  
14 having pain on his right side, Dr. DREYER stated there was a broken screw on the left side of Mr.  
15 BASH's spine as a result of the earlier surgery, and proposed and/or performed the following  
16 surgery to remove the broken screw (despite its location on the left, not right, side): posterolateral  
17 arthrodesis L4-5, L5-S1; posterior spinal instrumentation L4-S1; laminectomy L4, L5, S1 for the  
18 purpose of decompression.

19 5.86 Upon information and belief, Dr. DREYER did not have a third-party present to  
20 assist Mr. BASH in making informed consent decisions to any treatment recommendations made  
21 by Dr. DREYER, even though Dr. DREYER knew or should have known that Mr. BASH's  
22 contraindications, including opioid dependence, would more likely than not interfere with his  
23 ability to give informed consent.

1           5.87   Upon information and belief, based on, and in reliance of, the advice and stated  
2 opinion of Dr. DREYER, Mr. BASH agreed to the surgery.

3           5.88   This surgery took place in or around August 2016.

4           5.89   Upon information and belief, this was a negligent, medically unnecessary, or  
5 otherwise improper procedure that was part of a pattern and practice of PROVIDENCE via its  
6 agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures  
7 for the purpose of financial gain, ultimately resulting in permanent damages to Mr. BASH, and to  
8 the ESTATE OF STEVEN BASH, and to CHRISTINE BASH, individually as Mr. BASH's  
9 surviving wife and as personal representative of the ESTATE OF STEVEN BASH.

10          5.90   Upon information and belief, as a direct result of this ongoing pattern of medically  
11 unnecessary or otherwise improper surgeries, Mr. BASH suffered general and special permanent  
12 damages, including but not limited to increasing and debilitating pain in his back and legs, all of  
13 which forced him to take increasing amounts of pain medication despite his attempts to reduce  
14 those medications, including the following by 2017: use and increased use of Fentanyl patches (a  
15 treatment Mr. BASH had been able to taper off prior to the first surgery by Dr. DREYER);  
16 hydrocodone; gabapentin (a pain medication Mr. BASH had attempted to discontinue); naprosyn;  
17 and carbidopa-levodopa for newly onset restless leg syndrome, as well as anti-depressant/anti-  
18 anxiety medications. Upon information and belief, medical records show Mr. BASH's attempts  
19 to reduce pain medication, including the Fentanyl patch, only to return to his treating provider  
20 seeking pain relief and treatment, with his restless leg syndrome symptoms returning without use  
21 of the Fentanyl patch. Mr. BASH even sought advice to obtain the help of a service animal.

22          5.91   On or about May 4, 2017, over a year after his second surgery and about nine  
23 months from his third surgery, his treating physician Dr. John Hoehn concluded:



1 This patient lives with chronic, incurable, severe pain that interferes with the activities of  
2 living. Non-narcotic medications are ineffective or otherwise contraindicated. Patient has  
3 accepted the risks and side effects of narcotics for the benefit of improved quality of life.  
4 The patient and I know of no other available safe or effective alternatives. This is not for  
cure, but for maintenance therapy. I have seen no evidence of inappropriate or illegal use  
of these narcotics, and am willing to permit the patient to use them on an ongoing basis  
with my medical supervision.

5 5.92 On August 6, 2018, Mr. BASH passed away prematurely from a heart attack at the  
6 age of 51. Upon information and belief, Dr. DREYER's medically unnecessary and otherwise  
7 improper surgeries contributed to Mr. BASH's premature death. In fact, it is the stated belief of  
8 Mr. BASH's pain management treating specialist Dr. Craig Flinders that the "post-laminectomy  
9 pain syndrome thoracic and lumbosacral neuritis" resulted in the need for ongoing opioid  
10 medications which "definitely result[ed] in hypogonadism" from which Mr. BASH "suffered  
11 terribly;" that Mr. BASH was under "tremendous amount of stress due to the pain which  
12 contributed to his severe insomnia;" and that these all were "certainly major contributing factors  
13 which ultimately contributed to his heart disease and eventually resulted in his death."

## 14 VI. MAINTENANCE OF THE CLASS

15 6.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
16 incorporate by reference paragraphs 1.1 through 5.92 as if fully set forth herein.

### 17 6.2 Patient Class Definitions:

18 6.2.1 **Settlement Class.** Settlement Plaintiffs bring this Class action pursuant to  
19 Washington CR 23(b)(3) on behalf of the Settlement Class defined as follows: *All patients whose*  
20 *treatments informed the basis of the settlement between PROVIDENCE and DOJ (quantified for*  
21 *settlement purposes as \$22,690,458, with \$10,459,388 designated as restitution for settlement*  
22 *purposes), who, by definition, suffered special and/or general damages from medical procedures*  
23 *that were medically unnecessary or otherwise improper for said treatments.*

1           **6.2.2 Non-Settlement Class/PROVIDENCE.** Plaintiffs bring this Class action  
2 pursuant to Washington CR 23(b)(3) on behalf of the Non-Settlement Class/Providence defined as  
3 follows: *All patients who suffered damages as a result of medical procedures at PROVIDENCE,*  
4 *performed by Dr. JASON A. DREYER, DO and/or Dr. DANIEL ELSKENS DO that were medically*  
5 *unnecessary or otherwise improper but whose treatments were not included in the settlement either*  
6 *because DOJ offered to settle for less than full restitution or because their treatment was paid for*  
7 *by private health insurers such as Regence Blue Shield, or was paid privately, for treatments*  
8 *during the relevant time periods.*

9           **6.2.3 Non-Settlement Class/MULTICARE.** Plaintiffs bring this Class action  
10 pursuant to Washington CR 23(b)(3) on behalf of the Non-Settlement Class/Multicare defined as  
11 follows: *All patients who suffered damages as a result of medical procedures at MULTICARE*  
12 *performed by Dr. JASON A. DREYER, DO that were medically unnecessary or otherwise improper*  
13 *but whose treatments were not included in the restitution settlement because DOJ sought*  
14 *reimbursement for payments to PROVIDENCE only, for treatments during the relevant time*  
15 *periods.*

16           **6.2.4** Plaintiffs reserve the right to modify or amend the definitions of the  
17 proposed Classes and/or to add Subclasses if necessary before the Court determines whether  
18 certification is appropriate and as the Court may otherwise allow, including a subclass of  
19 vulnerable adults and/or for estates and/or for survival actions (claims already preserved herein).

20           **6.3 Numerosity:** The Department of Justice has estimated that the victims of these  
21 medically unnecessary or otherwise improper surgeries conducted by these neurosurgeons number  
22 in the “hundreds.” Hill, *supra*. Putative members of the class cannot be identified without the  
23 assistance of the DOJ and/or PROVIDENCE due to the fact that specifics are known only to them;

1 further, due to HIPAA privacy restrictions which prevent complete uninhibited disclosure of  
2 entitled Plaintiffs; as such, the Class is so numerous that joinder of all members is impracticable.

3 6.4 The cost of surgeries is unknown but, upon information and belief, it can be  
4 estimated on average to be over \$100,000.00 per patient. *The subject loss has been at least*  
5 *\$10,459,388*, confirming that the Class is so numerous that joinder of all members is impracticable.

6 6.4.1 A substantial majority of each of the foregoing patient classes is comprised  
7 of residents of the state of Washington, that is, more than two-thirds of the patients; and, their  
8 principal injuries resulted from conduct of the DEFENDANTS which conduct, and resulting  
9 injuries occurred within the state of Washington; claims are based upon state law, and at least one  
10 defendant is a citizen of Washington.

11 6.4.2 **Settlement Class.** In settling the 2020 *qui tam* action, the DOJ agreed to a  
12 settlement amount of \$22,690,458, with \$10,459,388 designated as restitution. Upon information  
13 and belief, this amount was calculated based upon governmental payments after contractual  
14 adjustments on submitted claims for settlement purposes (not the entire amount). DOJ has  
15 identified “hundreds of patients” as affected, and it is unknown the number of patients included in  
16 the restitution amount or the DOJ’s analysis therein, but it is believed, upon information and belief,  
17 that the Class is so numerous that joinder of all members is impracticable. As indicate in ¶ 6.3,  
18 prospective members of the class cannot be identified without the assistance of the DOJ and/or  
19 PROVIDENCE due to the fact that specifics are known only to them; further, due to HIPAA  
20 privacy restrictions which prevent complete uninhibited disclosure of entitled Plaintiffs.

21 6.5 **Non-Settlement Class/PROVIDENCE.** As noted, the DOJ reported that there  
22 were “hundreds” of victims of the PROVIDENCE scheme. The Class is so numerous that joinder  
23 of all members is impracticable. As indicate in ¶ 6.3, prospective members of the class cannot be

1 identified without the assistance of the DOJ and/or PROVIDENCE due to the fact that specifics  
2 are known only to them; further, due to HIPAA privacy restrictions which prevent complete  
3 uninhibited disclosure of entitled Plaintiffs.

4           **6.5.1 Non-Settlement Class/MULTICARE.** As noted, the DOJ reported that  
5 there were “hundreds” of victims of the PROVIDENCE scheme, which spanned approximately  
6 five (5) years. Upon information and belief, after leaving PROVIDENCE, Dr. JASON A.  
7 DREYER, DO worked for MULTICARE in Spokane for over two (2) years, affecting an unknown  
8 number of patients. Upon information and belief, The Class is so numerous that joinder of all  
9 members is impracticable. Moreover, Plaintiffs cannot identify Plaintiffs in the Class without the  
10 assistance of the DOJ and/or PROVIDENCE and/or other DEFENDANTS due to the fact that  
11 specifics are known only to them and due to HIPAA restrictions, which prohibit investigation to  
12 determine what patients have viable right of claims.

13           **6.6 Commonality:** This action involves common questions of law and fact which  
14 predominate over any questions affecting individual Class members, including but not limited to:

15           **6.6.1** Whether DEFENDANTS have engaged in criminal profiteering activity via  
16 multiple predicate acts of criminal profiteering under 9A.82.010(4), for financial gain actionable  
17 under RCW 9A.82.100 (Criminal Profiteering) or RCW 9A.82.080 including but not limited to  
18 hundreds of:

19                   6.6.1.1 false health care claims as defined in RCW 48.80.030 (RCW  
20                                           9A.82.010(hh));

21                   6.6.1.2 money laundering offenses as defined in RCW 9A.83.020  
22                                           (RCW 9A.82.010(t)); &

23                   6.6.1.3 theft by deception as defined/applied in RCW 9A.56 (RCW  
24

1 9A.82.010(e));

2 6.6.2 Whether DEFENDANTS' profiteering activity via these multiple predicate  
3 acts demonstrates a "pattern" of profiteering activity, as required by RCW 9A.82.100 (civil RICO)  
4 and as defined in RCW 9A.82.010(12), including:

5 6.6.2.1 Actions taken having the same/similar intent – the intent was to  
6 achieve and/or maintain financial gain, and the pattern of actions taken include, e.g.:

7 6.6.2.1.1 submitting hundreds of false health care claims;

8 6.6.2.1.2 accepting hundreds of payments for those claims;

9 6.6.2.1.3 concealing actions taken to obtain these funds;

10 6.6.2.1.4 failing to repay any of the funds received; and

11 6.6.2.1.5 failing to report the neurosurgeons to NPDB or  
12 WDOH as required by law (which would have  
13 resulted in disgorgement of funds received);

14 6.6.2.2 Actions taken have the same or similar outcome / result; here the  
15 result was to keep the funds obtained and conceal the bad acts of neurosurgeons (by, inter alia,  
16 failing to return funds or report them to NPDB or WDOH), which resulted in continued and  
17 perpetual harm to unsuspecting past and future patients;

18 6.6.2.3 Same or similar accomplices – here, the DEFENDANTS;

19 6.6.2.4 Same or similar principals – here, the DEFENDANTS;

20 6.6.2.5 Same or similar victims – here, unsuspecting and trusting  
21 individuals in need of specialized and honest health care treatment;

22 6.6.2.6 Same or similar methods of commission – here, the same pattern  
23 and practice repeated itself for the entire relevant time period(s) consistently and throughout;

1                   6.6.2.7 Otherwise interrelated by distinguishing characteristics, including  
2 nexus to the same enterprise – here, (1) one distinguishing characteristic includes a requirement in  
3 the medical profession, when seeking insurance coverage, to verify under penalties (including  
4 license revocation penalties) that the proposed medical procedures are medically necessary or are  
5 otherwise proper; and (2) The enterprises to which the “nexus” exists, see RCW 9A.82.010(8), are  
6 governmental health care payee entities like, *inter alia*, Medicare/Medicaid (which require the  
7 above-described assurances), and/or the health care insurance industry, including private insurance  
8 companies (which also require such assurances), or PROVIDENCE or Providence St. Joseph  
9 Health, or the association-in-fact of both;

10                   6.6.3 Whether DEFENDANTS’ pattern of criminal profiteering activity was  
11 discovered for purposes of the statute of limitations under RCW 9A.82.100(7) (civil RICO) no  
12 sooner than April 12, 2022 (the date the DEFENDANTS first admitted publicly a pattern existed,  
13 requiring a \$22.7 million settlement);

14                   6.6.4 Whether DEFENDANTS’ failure (PROVIDENCE’s failure in particular)  
15 to report the malfeasance of the neurosurgeons pursuant to RCW 70.41.210 was a violation of a  
16 statutory or common law duty to Plaintiffs resulting in general/special damages;

17                   6.6.5 Whether the settlement between DOJ and PROVIDENCE of \$22,690,458  
18 (with \$10,459,388 designated as restitution) creates a mechanism by which financial damages for  
19 medical costs can be measured for all Plaintiffs (and/or for the Settlement Class Plaintiffs),  
20 including as calculated pursuant to the Providence Corporate Integrity Agreement, and in equitable  
21 remedies including disgorgement, and forfeiture;

22                   6.6.6 Whether the settlement between DOJ and PROVIDENCE for a specific  
23 settlement amount (\$22,690,458) and a specific amount designated for restitution (\$10,459,388)

1 creates a mechanism by which to quantify additional damages – i.e., these are agreed-upon  
2 amounts regarding medically unnecessary and other improper procedures; they form the basis of  
3 this class action; the question becomes whether these agreed-upon medical costs can be used to  
4 quantify the remainder of damages for the classes of Plaintiffs where the entire class or classes can  
5 be equitably adjudicated pursuant to the agreed-upon markers;

6           6.6.7 Whether PROVIDENCE owed a common law or statutory duty of care to  
7 all patients to report the actions of the neurosurgeons pursuant to RCW 70.41.210, resulting in  
8 actionable lawsuits by all Plaintiffs against PROVIDENCE for failure to comply with that statutory  
9 duty, resulting in reasonably foreseeable general/special damages;

10           6.6.8 Whether PROVIDENCE breached its duty to comply with the standard of  
11 care of a hospital;

12           6.6.9 Whether DEFENDANTS exercised the requisite degree of skill, care and  
13 learning expected of a reasonably prudent hospital/healthcare provider;

14           6.6.10 Whether DEFENDANTS fell below their professional standard of care;

15           6.6.11 Whether DEFENDANTS failed to obtain consent/informed consent that  
16 surgery would not occur in a safe environment and that it included medically unnecessary or  
17 otherwise improper procedures;

18           6.6.12 Whether Defendant violated the Consumer Protection Act (RCW 19.86);

19           6.6.13 Whether Defendant violated the Criminal Profiteering Act (RCW  
20 9A.82.100 and 9A.82.080);

21           6.6.14 Whether Defendant concealed evidence forming the basis of this action  
22 from its patients, from MULTICARE patients, and from the public during the relevant time period  
23 until no sooner than April, 2022;

1                   6.6.15 Whether nonmonetary relief is required to compensate Class members;

2                   6.6.16 The nature and extent of Class-wide injury and the measure of  
3 compensation for such injury.

4           6.7     **Typicality:** Class Plaintiffs' claims are typical of the claims of other members of  
5 the Class and Class Plaintiffs are not subject to any atypical claims or defenses. DEFENDANTS  
6 did not take reasonable steps to ensure that medically unnecessary or otherwise improper  
7 procedures did not occur. DEFENDANTS sought/received payments for medically unnecessary  
8 and other improper procedures. DEFENDANTS concealed their wrongdoing by e.g., (a) failing to  
9 reimburse the enterprise health care industry and/or Medicare/Medicaid for payments for  
10 procedures that did not meet criteria for reimbursement, were medically unnecessary, or were  
11 otherwise improper; and (b) failing to report the neurosurgeons to the NPBD or the WDOH (which  
12 would have resulted in disgorgement). DEFENDANTS failed to advise Plaintiffs of medically  
13 unnecessary surgeries and otherwise improper procedures to which they were subjected.  
14 DEFENDANTS took repeated, similar actions as outlined in the commonality section, to which  
15 PROVIDENCE has admitted. Plaintiffs received the same notice, i.e., no sooner than the public  
16 announcement of the DOJ Settlement on April 12, 2022. Plaintiffs underwent similar medically  
17 unnecessary or otherwise improper procedures due to the schemes of DEFENDANTS that went  
18 unabated due to DEFENDANTS' negligence and concealment. Plaintiffs' claims like those of the  
19 Class, arise out of the same common course of conduct by Defendant directed toward Plaintiffs  
20 and the Class and are based on the same legal and remedial theories. Classes, and/or the Settlement  
21 Class, once identified, will have an additional, direct nexus to settlement/restitution amounts.

22           6.8     **Adequacy:** Class-Plaintiffs will fairly and adequately represent the Class, as they  
23 are committed to prosecuting this action, have no conflicts of interest, and have retained competent



counsel who are experienced civil trial lawyers with significant experience in complex litigation and trial, including tort litigation. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class(es) and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the proposed Class.

**6.9 Predominance:** The common issues predominate over any individualized issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

**6.10 Superiority:** Class-Plaintiffs and Class members have suffered and will continue to suffer harm and damages as a result of DEFENDANTS' actions. Absent a Class action, most Class members likely would find the cost of litigating their claims prohibitive and/or may not even become informed of their causes of action due to HIPAA confidentiality and how the details of the settlement (and which cases inform the bases of the settlement agreement) are also currently held confidentially. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, and provides a forum for all claims, which number in the "hundreds" (according to the Department of Justice). There will be no significant difficulty in the management of this case as a Class action. The identity of each Class member is readily identifiable from DEFENDANTS' own records and the records of the DOJ. Unless this matter proceeds as a Class action, many patients who were injured by these DEFENDANTS may not otherwise learn how or why they were injured.

## **VII. CAUSE OF ACTION: Criminal Profiteering [RCW 9A.82.100 and 9A.82.080]**

**7.1** Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 6.10 as if fully set forth herein.

1           7.2     Plaintiffs herein set forth their claim for damages resulting from DEFENDANTS'  
2 violations of the Washington Criminal Profiteering Act, 9A.82.100 and 9A.82.080.

3           7.3     Each DEFENDANT is a “person” within the meaning of RCW 9A.04.110(17).

4           **A. Violation of RCW 9A.82.100**

5           7.4     DEFENDANTS violated RCW 9A.82.100, as further alleged herein, by knowingly  
6 engaging in a pattern of criminal profiteering activity as set forth in the preceding paragraphs by  
7 engaging in the following acts of criminal profiteering activity for financial gain (“predicate acts”)  
8 with a nexus to the identified health care insurance enterprises:

9                   7.4.1     false health care claims as defined in RCW 48.80.030 (RCW  
10                               9A.82.010(hh));

11                  7.4.2     money laundering as defined in RCW 9A.83.020 (RCW 9A.82.010(t));

12                  7.4.3     theft by deception as defined/applied in RCW 9A.56 (RCW  
13                               9A.82.010(e)).

14           **B. Violation of RCW 9A82.080(1) & (2)**

15           7.5     DEFENDANTS violated RCW 9A82.080(1) & (2) , as further alleged herein, by:  
16 (1) knowingly and willfully receiving the proceeds, directly or indirectly, from a pattern of  
17 criminal profiteering activity to use or invest any part thereof in the acquisition of any title to, or  
18 any right, interest, or equity in, real property or in the establishment or operation of the enterprise  
19 PROVIDENCE or the alternative enterprise(s); and (2) knowingly and willfully acquiring or  
20 maintaining, directly or indirectly, an interest in or control of the enterprise or real property through  
21 a pattern of criminal profiteering activity. Plaintiffs have been injured in their persons, property  
22 and business as a result of the DEFENDANTS’ knowing receipt of the proceeds from the pattern  
23 of criminal profiteering activity and their subsequent use and investment, and concealment of their

1 use and investment, in the enterprise of PROVIDENCE or the alternative enterprises, including  
2 for purposes of maintaining the enterprise(s) to attract patients and submit further false health care  
3 claims.

4 **C. Violation of RCW 9A82.080(3)**

5 7.6 DEFENDANTS violated RCW 9A82.080(3), as further alleged herein, by  
6 knowingly and willfully conspiring to commit the foregoing criminal profiteering acts and  
7 violations of RCW 9A.82.080(1) & (2), in violation of RCW 9A.82.080(3).

8 7.7 Each plaintiff is a person who sustained injury to his or her person, business, or  
9 property by an act of criminal profiteering that is a part of a pattern of criminal profiteering activity  
10 under RCW 9A82.100, or by the offenses alleged in RCW 9A82.080(1), (2) & (3).

11 7.8 Plaintiffs' injuries were directly and proximately caused by Defendants' violations  
12 of the aforementioned offenses.

13 7.9 As to each of the following predicate offenses, failure by DEFENDANTS to return  
14 funds obtained as described below is evidence of the intent to commit the predicate act(s) and are  
15 part of the pattern of criminal profiteering activity alleged herein.

16 **Predicate Acts**  
17 **False Health Care Claims, RCW 48.80.030**

18 7.10 As set forth herein above, DEFENDANTS:

19 7.10.1 presented and/or caused to be presented to health care payers hundreds of  
20 claims for a health care payment knowing the claim to be false and/or that  
21 falsely represented that the goods or services were medically necessary in  
22 accordance with professionally standards; and/or

23 7.10.2 concealed or failed to disclose information with intent to obtain health  
24 care payments to which they were not entitled, including but not limited

1 to false certifications of medical necessity and failure to disclose  
2 noncompliance with 42 U.S.C. § 11133(a)(1) of the Healthcare Quality  
3 Improvement Act of 1986, and the NPDB guidelines.

4 7.11 These acts constituted false health care claims in violation of RCW 48.80.030.

5 **Predicate Acts**  
6 **Money Laundering, RCW 9A.83.020(1)(a) &(b)**

7 7.12 As set forth herein above: DEFENDANTS conducted or attempted to conduct  
8 financial transactions (to wit, receiving and depositing health care payments) involving the  
9 proceeds of specified unlawful activity (to wit, false health care claims, in violation of RCW  
10 48.80.030, and theft by deception under RCW 9A.56.030) knowing the property was proceeds of  
11 that specified unlawful activity. In addition, Defendants knew that the transactions with Plaintiff's  
12 health care payors (*i.e.*, Medicare) were designed in whole or in part to conceal or disguise the  
13 nature, location, source, ownership, or control of the proceeds of specified unlawful activity, and  
14 acted recklessly as to whether the property was proceeds of specified unlawful activity.

15 7.13 These acts constitute money laundering in violation of RCW 9A.83.020(1)(a)&(b).

16 **Predicate Acts**  
17 **Theft by Deception, RCW 9A.56.030**

18 7.14 As set forth herein above: DEFENDANTS, with the intent to defraud patient class  
19 members, the health insurance industry and/or governmental insurance entities (e.g.,  
20 Medicare/Medicaid), wrongfully obtained property (to wit, financial payments of false health care  
21 claims) by knowingly misrepresenting information about the health care provided, the medical  
22 necessity of it, and/or other improper issues, with the intent to deprive them of that property.

23 7.15 The property or services described herein exceed \$1,500 in value.

24 7.16 These acts constituted theft in the first degree, in violation of RCW 9A.56.030.

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7.18 The multiple acts of profiteering activity had the same or similar intents, results, accomplices, victims, and methods of commission, and are otherwise interrelated by distinguishing characteristics, including a nexus to the same enterprises alleged herein of Providence, Providence St. Joseph Health care insurance payors, and/or governmental insurance entity, and are not isolated incidents.

7.20 The criminal profiteering acts had similar purposes: *e.g.*, financial gain to the DEFENDANTS.

7.22 Because of DEFENDANTS' failures to disclose and affirmative acts of concealment, the pattern of criminal profiteering activity was not discoverable until April 12, 2022 when the U.S. Attorney publicly announced its investigative findings regarding Providence, Dr. JASON A. DREYER, DO, and Dr. DANIEL ELSKENS, DO about the misconduct undertaken in combination to commit the profiteering alleged herein.

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PLAINTIFFS' CLASS ACTION COMPLAINT  
(SECOND AMENDED)  
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1           7.23   An enterprise “includes any individual, sole proprietorship, partnership,  
2 corporation, business trust, or other profit or nonprofit legal entity, and includes any ... group of  
3 individuals associated in fact although not a legal entity, and both illicit and licit enterprises and  
4 governmental and nongovernmental entities.” RCW 9A.82.010(8).

5           7.24   Enterprises consist of ongoing organizations, formal or informal, with various  
6 associates function as a continuing unit. See *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn. 2d 820, 839,  
7 355 P.3d 1100 (2015).

8           7.25   The enterprises used in, and with a nexus to, the pattern of criminal profiteering  
9 activity under RCW 9A.82.100 include health care insurance providers for the plaintiff Class(es),  
10 including government health care insurers (i.e., “governmental” entities U.S. Department of Health  
11 and Human Services (HHS); the Defense Health Agency (DHA), acting on behalf of the TRICARE  
12 Program; the Federal Health Benefits Program; the U.S. Department of Veterans Affairs (VA)  
13 which administers the VA Community Program, and the Washington Health Care Authority  
14 (HCA)) and private insurers whose payments promoted the medically unnecessary surgeries and  
15 related health care.

16           7.26   In the alternative, the enterprise used in, and with a nexus to, the pattern of criminal  
17 profiteering under RCW 9A.82.100 is PROVIDENCE, or Providence St. Joseph Health, or the  
18 association-in-fact of both. Both PROVIDENCE and Providence St. Joseph Health are legal  
19 corporations or legal entities, making them enterprises under RCW 9A.82.010(8). Their  
20 association-in-fact had a common purpose of engaging in the aforesaid course of conduct, through  
21 an ongoing organization, and with associates functioning as continuing unit. For example,  
22 Providence and Providence St. Joseph Health share offices and have functioned as a continuing  
23 unit for years up through the disclosures of April 2022.

7.27 Independent motives and stakes of Dr. JASON A. DREYER, DO are sufficient to form the basis of an independent conspirator.

7.28 Independent motives and stakes of JANE DOES and JOHN DOES, including in respect to concealment and failing to report, are sufficient to form the basis of an independent conspirator.

Each of these aforementioned enterprises is a legal entity, that is, a partnership, corporation, business trust, or other profit or nonprofit legal entity, governmental and nongovernmental entities, or an association or group of individuals associated in fact although not a legal entity within the meaning of RCW 9A.82.010(8). Each alleged enterprise is an ongoing organization, formal or informal, with various associates functioning as a continuing unit.

## Causation / Injury and Remedies

7.29 As a direct and proximate result of DEFENDANTS' acts or omissions discussed herein, Plaintiff Class(es) and individual Plaintiffs have suffered injuries to their person, business, or property including but not limited to economic loss, pain, suffering, emotional distress, and injury to their physical being, including injuries compensable under RCW 9A.82.080 and 9A.82.100. These injuries include damages from the investment of proceeds in, or for the maintenance, establishment, or operation of the enterprise under RCW 9A.82.080.

7.30 Plaintiffs are entitled to an award of damages including but not limited to: compensation for their actual damages; treble damages; a civil penalty of \$250,000; injunctive, equitable, and forfeiture relief as set forth in RCW 9A.82.100(2), (3) and (4), and (4)(f); and costs and investigative and attorneys' fees as authorized by RCW 9A.82.100(1)(a).

7.31 The equitable relief includes, but is not limited to, disgorgement of ill-gotten gains obtained from the profiteering in order to prevent, restrain, and deter future unlawful conduct by

the Defendant,<sup>3</sup> including by use of the bonus incentive compensation.

## VIII. CAUSE OF ACTION: FAILURE TO REPORT (RCW 70.41.210)

8.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 7.31 as if fully set forth herein.

8.2 Pursuant to RCW 70.41.210, PROVIDENCE, through its employees and agents, including Dr. DANIEL ELSKENS DO, Dr. JASON DREYER, DO, and JOHN DOE / JANE DOE DEFENDANTS, had a mandatory duty, *inter alia*, to report within 15 days to the Washington Department of Health any voluntary restriction or termination of the practice of Dr. DANIEL ELSKENS DO or Dr. JASON DREYER, DO – “including [their] voluntary resignation” – while they were under investigation or the subject of a proceeding by PROVIDENCE regarding unprofessional conduct, or in return for PROVIDENCE not conducting such an investigation or proceeding, or not taking action against said physicians.

8.3 Unprofessional conduct includes (a) incompetence, negligence or malpractice which results in injury or which creates an unreasonable risk that a patient may be harmed; (b) practice beyond the scope of practice as defined by law or rule; (c) misrepresentation or fraud in any aspect of the conduct of the business or profession; (d) the commission of any act involving moral turpitude, dishonesty or corruption relating to the medical profession; or (e ) promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure or service. RCW 18.130.180(1), (4), (12), (13), (16).

8.4 As set forth in the preceding paragraphs, PROVIDENCE and its employees and

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<sup>3</sup> See e.g., *Creel v. Says*, 2022 WL 4490141 (E.D. Tex. Sept. 27, 2022) (the law does not allow a person to profit from wrongdoing at the expense of another, and disgorgement can be a proper equitable remedy under RICO laws to, *inter alia*, prevent, restrain and deter future unlawful conduct).



agents, including JOHN DOE / JANE DOE DEFENDANTS, allowed Dr. DANIEL ELSKENS DO and Dr. JASON A. DREYER, DO to resign after initiating investigations into their unprofessional conduct as defined herein and did not report them to the Department of Health as required by RCW 70.41.210.

8.5 Reporting is encouraged by public policy. RCW 70.41.210(5) provides civil immunity to a hospital, its chief administrator, or its executive officer who file a good faith report with the Department of Health.

8.6 PROVIDENCE and its agents/employees also failed to report Dr. DANIEL ELSKENS DO and Dr. JASON A. DREYER, DO to the NPDB. As a result of the failure to report, these surgeons continued to conduct unnecessary, improper, and defective procedures for profit while harming multiple patients, and defrauding patients and insurance companies, including Medicare and Medicaid.

8.7 The purpose of, *inter alia*, this mandatory reporting is to “promote safe and adequate care of individuals in hospitals” and to enforce minimum standards and rules “for the safe and adequate care of patients.” RCW 70.41.010, .030.

8.8 Plaintiffs, who are/were individuals receiving care at PROVIDENCE SMMC and at MULTICARE / DEACONESS, were within the class of individuals for whose special benefit this mandatory reporting statute was enacted – e.g., for their safe and adequate care.

8.9 Given the above and the allegations contained herein, PROVIDENCE owed an implied statutory duty of care to each Plaintiff in the Class(es) to report Dr. DANIEL ELSKENS DO and Dr. JASON A. DREYER, DO.

8.10 DEFENDANTS breached this implied statutory duty when they failed to report Dr. DANIEL ELSKENS DO or Dr. JASON A. DREYER, DO to the Washington Department of

1 Health and the NPDB.

2 8.11 As a direct and proximate result of DEFENDANTS' breach of the duties owed, Dr.  
3 JASON A. DREYER, DO and Dr. DANIEL ELSKENS DO continued to conduct medically  
4 unnecessary or otherwise improper procedures for profit while harming patients and defrauding  
5 patients and insurance companies, including Medicare and Medicaid; and each Plaintiff was  
6 permanently injured, suffered, and continues to suffer physical disability and pain, medical  
7 expenses, and other damages to be fully determined at trial.

8 8.12 It was reasonably foreseeable that DEFENDANTS' breach of the duties owed  
9 would result in the damages described herein.

10 **IX. CAUSE OF ACTION: CONSUMER PROTECTION ACT (RCW 19.86)**

11 9.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
12 incorporate by reference paragraphs 1.1 through 8.12 as if fully set forth herein.

13 9.2 As set forth herein above, DEFENDANTS used false or deceiving marketing  
14 practices and otherwise engaged in unfair or deceptive acts or practices to entice Plaintiffs to  
15 engage in their services. This constitutes an unfair or deceptive act or practice under RCW 19.86.

16 9.3 These acts or omissions of DEFENDANTS occurred in furtherance of trade or  
17 commerce.

18 9.4 The unfair or deceptive act or practice of DEFENDANTS as set forth herein above  
19 constitute fraud which affects the public interest and violates the Washington Consumer Protection  
20 Act.

21 9.5 As a direct and proximate result of DEFENDANTS' violations of the Act, as set  
22 forth herein above, Plaintiffs suffered damages.

23 9.6 DEFENDANTS are now liable for those damages in an amount fully set forth at  
24

trial, but include damages to property and business, the trebling of same, and reasonable attorney fees and costs.

**X. CAUSE OF ACTION: MEDICAL NEGLIGENCE (RCW 7.70) vs. PROVIDENCE, Dr. JASON A. DREYER, DO AND Dr. DANIEL ELSKENS, DO (Providence Plaintiffs, Named and Putative)**

10.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 9.6 as if fully set forth herein.

10.2 As health care providers, PROVIDENCE, Dr. JASON A. DREYER, DO, and DR. DANIEL ELSKENS, DO owed Plaintiffs a duty to comply with the standard of care.

10.3 Defendant PROVIDENCE, through its employees and agents, including Dr. JASON A. DREYER, DO and DR. DANIEL ELSKENS, DO, failed to exercise the degree of care, skill, and learning expected of reasonably prudent health care providers in the same profession or class in the State of Washington acting in the same or similar circumstances. Such conduct proximately caused severe injuries and damages to plaintiffs. Defendant's conduct violated RCW 4.24, 13 RCW 7.70, and other applicable law.

10.4 The statute of limitations in respect to the medical negligence claims will be tolled on certain patients as a result of the Continuing Course of Treatment Doctrine; and Discovery Rule.

**XI. CONSENT/INFORMED CONSENT (Providence Patients, Named and Putative)**

11.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 10.4 as if fully set forth herein.

11.2 As set forth herein above, despite fraudulent reporting otherwise, DEFENDANTS breached their duty to inform plaintiffs of all material facts, including risks and alternatives, which a reasonably prudent patient would need to make an informed decision on whether to consent to or reject proposed courses of treatment, including but not limited to the risk of medically unnecessary

1 procedures for which the motive was financial gain and not proper medical treatment. This failure  
2 proximately caused injury to plaintiffs.

3 **XII. CORPORATE NEGLIGENCE (Providence Plaintiffs, Named and Putative)**

4 12.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
5 incorporate by reference paragraphs 1.1 through 11.2 as if fully set forth herein.

6 12.2 A medical facility, in this case, PROVIDENCE, has the following duties: (1) a duty  
7 to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty  
8 to select and retain only competent physicians and staff; (3) a duty to oversee all persons who treat  
9 patients within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate  
10 rules and policies to ensure quality care for the patients.

11 12.3 PROVIDENCE breached the afore listed duties by, without limitation:

12 12.3.1 failing to select, retain, and supervise competent staff;

13 12.3.2 failing to ensure of proper oversight of staff;

14 12.3.3 failing to assure proper diagnosis and care;

15 12.3.4 failing to formulate, adopt and enforce adequate rules, policies and/or  
16 adopting policing or practices which in themselves created an unnecessary  
17 and unreasonable risk to Plaintiff(s);

18 12.3.5 failing to conduct an adequate credentialing background investigation  
19 pursuant to best practice guidelines before hiring Dr. JASON DREYER and  
20 Dr. DANIEL ELSKENS, and giving them privileges to see patients and  
21 perform surgeries at PROVIDENCE facilities.

22 12.4 PROVIDENCE's breach of corporate duties as set forth above directly and  
23 proximately led to injuries and damages to the Plaintiffs.



1           14.3   As set forth herein above, DEFENDANTS engaged in acts or omissions breaching  
2 these fiduciary duties, which directly and proximately caused damages to Plaintiffs. The patients  
3 relied upon DEFENDANTS' fiduciary duties in following their advice on the need for medical  
4 treatment.

5           14.4   DEFENDANTS have statutory and common law duties to inform patients of risks  
6 of medical care, and all information needed for patients to make informed healthcare decisions.

7           14.5   DEFENDANTS were required to inform patients about the substantially increased  
8 risk of treatment by Dr. JASON A. DREYER, DO and Dr. DANIEL ELSKENS DO due to their  
9 history of performing medically unnecessary and otherwise improper procedures.

10          14.6   Without this information, Plaintiffs were deprived of material facts to inform their  
11 treatment decisions.

12          14.7   DEFENDANTS knew that in withholding material facts, they were affirmatively  
13 misrepresenting information to Plaintiffs.

14          14.8   DEFENDANTS intended for Plaintiffs to rely on DEFENDANTS, and  
15 DEFENDANTS' concealments, to make informed healthcare decisions.

16          14.9   Upon information and belief, DEFENDANTS were further engaging in false or  
17 misleading reporting in medical reports in an effort to conceal evidence of negligent, violative,  
18 unethical, and fraudulent treatment practices.

19          14.10   Plaintiffs did not know DEFENDANTS were concealing material facts and had the  
20 right to and did reasonably rely on DEFENDANTS to meet its statutory and common law duty to  
21 inform them of material facts. DEFENDANTS' failure to inform Plaintiffs, in the face of a legal  
22 duty to do so, constitutes fraud by concealment, as specifically identified herein.

23          14.11   Plaintiffs suffered damages as a result of a reasonable reliance on DEFENDANTS'

1 fraud and misrepresentation.

2 **XV. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS and OUTRAGE**

3 15.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
4 incorporate by reference paragraphs 1.1 through 14.11 as if fully set forth herein.

5 15.2 DEFENDANTS owed Plaintiffs a common law duty not to engage in conduct that  
6 would cause the Plaintiffs severe emotional distress.

7 15.3 By misleading Plaintiffs, concealing evidence of negligent, violative, unethical, and  
8 fraudulent treatment practices, performing unnecessary and ill-advised medical procedures, and  
9 operating below the standard of care, DEFENDANTS negligently inflicted emotional distress  
10 upon Plaintiffs.

11 15.4 Additionally, DEFENDANTS' conduct as set forth herein constituted extreme and  
12 outrageous conduct that would shock the conscious of an ordinary, reasonable person; which  
13 outrageous conduct resulted in Plaintiffs' suffering severe emotional distress.

14 **XVI. LOSS OF CONSORTIUM**

15 16.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
16 incorporate by reference paragraphs 1.1 through 15.4 as if fully set forth herein.

17 16.2 As a direct and proximate result of DEFENDANTS' negligent and intentional acts  
18 or omissions as set forth herein, Plaintiffs' statutorily qualified family members suffered loss of  
19 consortium, and special damages if available.

20 **XVII. WRONGFUL DEATH/SURVIVOR ACTIONS**

21 17.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
22 incorporate by reference paragraphs 1.1 through 16.2 as if fully set forth herein.

23 17.2 DEFENDANTS' negligent and intentional acts or omissions as set forth herein

1 resulted in, and/or contributed to the injury and ultimate death of certain claimants, resulting in  
2 damages/loss to their estate and to statutorily qualified family members, both individually and/or  
3 in their capacity as personal representative of the estate(s).

4 17.3 Defendants are liable for those negligent acts or omissions pursuant to Wash. Rev.  
5 Code § 4.20.005 (wrongful death and survivor statutes).

### 6 **XVIII. VICARIOUS LIABILITY**

7 18.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
8 incorporate by reference paragraphs 1.1 through 17.3 as if fully set forth herein.

9 18.2 Upon information and belief, employees and agents of the defendants, implicated  
10 in this cause of action were at all times relevant to this cause of action acting within their official  
11 capacity and scope of employment with and for PROVIDENCE.

12 18.3 Upon information and belief, physicians, employees, or agents alleged to have been  
13 negligent in the treatment/care of Plaintiff(s) in this case were either employees, agents in fact, or  
14 alternatively, ostensible agents.<sup>4</sup>

15 18.4 PROVIDENCE is liable for injuries/damage suffered by Plaintiff(s) as a result of  
16 the intentional and negligent acts or omissions of their employees, owners, managers, agents, or  
17 ostensible agents under the theory of *Respondeat Superior*.

### 18 **XIX. NEGLIGENCE PER SE**

19 19.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
20 incorporate by reference paragraphs 1.1 through 18.4 as if fully set forth herein.

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21  
22  
23 <sup>4</sup> *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 112, 579 P.2d 970 (1978) (hospitals are  
24 liable for the doctors who work at them).



19.2 Certain of the acts of the DEFENDANTS set forth herein amount to regulatory and statutory violations. The violation of regulations and statutes constitutes negligence per se.<sup>5</sup>

## XX. RES IPSA LOQUITUR

20.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 19.2 as if fully set forth herein.

20.2 DEFENDANTS had exclusive control over the actions and omissions which constituted the sum total of the care provided to Plaintiffs during their pre-surgical, surgical, and post-surgical care.

20.3 DEFENDANTS had exclusive control over the actions and omissions which ultimately resulted in the defrauding of Plaintiffs and their medical insurance providers, including Medicare and Medicaid.

20.4 DEFENDANTS acted intentionally to conceal the fraud in respect to regulatory reporting, billing, and patient medical records as set forth herein above.

20.5 As a result of this concealment and fraud, Plaintiffs had no ability to take action on their own behalf to avert the injuries and damages cause by the DEFENDANTS negligent and intentional acts or omissions which caused Plaintiffs to suffer injuries and damages.

20.6 The injuries and damages sustained by the Plaintiffs here do not occur in the absence of negligence or intentional actions in variance with statute and regulatory authority undertaken by the medical care team.

20.7 DEFENDANTS are now liable for the damages Plaintiff has suffered as a result of

<sup>5</sup> Restatement (Third) of Torts §14 states in relevant part that an actor is negligent per se if that actor violates a statute that is designed to protect against the type of accident or harm caused by the actor's conduct, and the plaintiff is someone the statute is designed to protect.

1 their negligence pursuant to the doctrine of *Res Ipsa Loquitur*.

2 **XXI. UNJUST ENRICHMENT (Providence Plaintiffs, Named and Putative)**

3 21.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
4 incorporate by reference paragraphs 1.1 through 20.7 as if fully set forth herein.

5 21.2 With each and every payment received as described herein, each DEFENDANT  
6 received a benefit at a Plaintiff's expense, and the circumstances make it unjust for the  
7 DEFENDANT to retain the benefit without payment.

8 21.3 DEFENDANTS are liable for the damages to Plaintiff for unjust enrichment,  
9 including restitution and disgorgement.

10 **XXII. DISGORGEMENT**

11 22.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
12 incorporate by reference paragraphs 1.1 through 21.3 as if fully set forth herein.

13 22.2 In violation of their common law, equitable, and statutory duties to Plaintiffs,  
14 Defendants profited from their wrongful conduct, and these profits must be disgorged in order to  
15 deter the continuation of this wrongful conduct.

16 22.3 Defendants have obtained ill-gotten profits from their misconduct, including  
17 payments from federal and state governments, and from health insurers and patients. These  
18 payments are proximately caused by the aforesaid violations, and can be reasonably approximated.

19 22.4 Disgorgement of these ill-gotten profits is necessary to deter further violations.

20 **XXIII. WAIVER OF PRIVILEGE**

21 23.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and  
22 incorporate by reference paragraphs 1.1 through 22.4 as if fully set forth herein.

23 23.2 Waiver of the physician-patient privilege under RCW 5.60.060(4)(b) does not  
24

1 waive or release any other rights or privileges, including those related to the physician-patient  
2 relationship, other than the privilege set out in the above-cited statute.

#### 3 **XXIV. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS in their favor  
5 and in favor of the Class as follows:

6 24.1 Finding that this action is properly maintainable as a Class action pursuant to CR  
7 23(b)(3), and certifying each Class.

8 24.2 Finding the Plaintiffs are prevailing parties against each DEFENDANT, jointly and  
9 severally, for violations of RCW 9A.82.100 and RCW 9A.82.080 (Criminal Profiteering) and  
10 award Plaintiffs compensation equal to their actual damages, a tripling of those damages, a civil  
11 penalty of \$250,000, injunctive and remedial relief as set forth in RCW 9A.82.100(2), (3), and (4),  
12 and forfeiture under RCW 9A.82.100(4)(f).

13 24.3 Awarding Plaintiffs reasonable investigative and attorneys' fees and costs under  
14 RCW 9A.82.100(1)(a).

15 24.4 Finding the Plaintiffs are prevailing parties against each DEFENDANT, jointly and  
16 severally, for violations of RCW 19.86 (Consumer Protection Act) and award Plaintiffs damages  
17 as allowed under the Act, including a tripling of damages and reasonable attorney fees and costs.

18 24.5 Finding Plaintiffs to be the prevailing parties against each DEFENDANT for  
19 violations of the implied statutory duty to report Dr. DANIEL ELSKENS DO and Dr. JASON A.  
20 DREYER, DO, which resulted in general and special damages to be determined at trial.

21 24.6 Finding DEFENDANTS were otherwise negligent in their acts as outlined above.

22 24.7 Finding DEFENDANTS' negligence resulted in injury to each Plaintiff.

23 24.8 Ordering DEFENDANTS to identify all Class Plaintiffs pursuant to their records.

24.9 For compensatory damages suffered by Plaintiffs and Class resulting from any and all claims pled herein, in amounts to be proven at trial.

24.10 For unjust enrichment, Plaintiffs seek restitution and disgorgement.

24.11 For costs and disbursements.

24.12 For statutory attorney fees.

24.13 For private forfeiture relief, see RCW 9A.82.100(4)(f).

24.14 For a forfeiture money judgment in the amount of no less than \$22,690,458.

24.15 For disgorgement of ill-gotten gains obtained as a result of Defendants' breach of their duties to the Plaintiffs, including through criminal profiteering, breach of fiduciary or statutory duty, or benefitting from unjust enrichment.

24.16 If Defendant brings any frivolous or unfounded defenses, for attorneys' fees and costs pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil Rules.

24.17 For statutory interest on the judgment from the date judgment is entered until paid in full.

24.18 For prejudgment interest on the special damages.

24.19 For prejudgment interest on liquidated damages.

24.20 All damages allowed under RCW 4.20.010, RCW 4.20.20, RCW 4.20.046, RCW 4.20.060, and RCW 4.24.010, as applicable.

24.21 For entry of equitable nonmonetary remedies and a permanent injunction, including but not limited to as authorized in RCW 9A.82.100(2), (3), (4) and (4)(f):

24.21.1 enjoining DEFENDANTS from utilizing any form of productivity bonus metric that encourages surgeons to engage in high volume patient care, or increased complex surgical procedures.

24.21.2 requiring DEFENDANTS to provide open public access to peer review materials and credentialling files for all surgeons.

24.21.4 divesting and disgorging DEFENDANTS of the proceeds of their profiteering activity.

24.23 The Plaintiffs reserve the right to elect remedies if there is a determination of a conflict between claims or remedies.

Plaintiffs hereby demand that all causes of action pled herein be tried to a 12-person jury with sufficient alternates to assure complete justice without interference or delay.

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under penalty of perjury under the laws of the state of  
3 Washington, that I am now, and at all times material hereto, a citizen of the United States, a resident  
4 of the state of Washington, over the age of 18 years, not a party to, nor interested in the above-  
5 entitled action, and competent to be a witness herein. I caused to be served on this date the  
6 foregoing document in the manner indicated to the parties listed below:

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DATED this 11<sup>th</sup> day of May, 2023.



Rachel Cook, Paralegal